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January 30, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1167 – Proposed Revisions to Regulation Z
Docket No. R-1168 – Proposed Revisions to Regulation B
Docket No. R-1169 – Proposed Revisions to Regulation E
Docket No. R-1170 – Proposed Revisions to Regulation M
Docket No. R-1171 – Proposed Revisions to Regulation DD

Dear Ms. Johnson:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the proposed revisions to Regulation Z, the Truth in Lending Act (TILA), Regulation B, the Equal Credit Opportunity Act (ECOA), Regulation E, the Electronic Fund Transfers Act (EFTA), Regulation M, the Consumer Leasing Act (CLA), and Regulation DD, the Truth in Savings Act. The proposed revisions would primarily revise the standard for providing "clear and conspicuous" disclosures that would be uniform among these regulations. The standard that would be adopted would be the one currently included in the rules adopted by the financial institution regulators in 2000 with regard to the annual privacy notices that must be sent by financial institutions. The Federal Reserve Board (Board) has also proposed additional changes to Regulation Z.

CUNA represents more than 90 percent of our nation's 10,000 state and federal credit unions. This letter reflects the views of our member credit unions and of CUNA's Consumer Protection Subcommittee, chaired by Kris Mecham, CEO of Deseret First Credit Union, Salt Lake City, Utah.

AMERICA'S
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Summary of CUNA's Position

- CUNA does not support the proposed revisions that would alter the standard for providing "clear and conspicuous" disclosures. The proposed standard would be uniform among these regulations and would be consistent with the standard currently included in the rules adopted by the federal financial institution regulators in 2000 with regard to annual privacy notices. However, the federal regulators are now considering amending the rules with regard to privacy notices, and we do not believe that disclosure requirements with regard to Regulations Z, B, E, M, and DD should conform to a standard that may be subject to change. We could support possible changes to the "clear and conspicuous" standard, but suggest that the time to consider such changes should be after any changes have been made to the privacy rules and after careful consideration as to whether the standard under those rules is appropriate for Regulations Z, B, E, M, and DD.
- The information required to be disclosed under Regulations Z, B, E, M, and DD is different and more technical than the information contained in the privacy notices, and it would be difficult to disclose this information in the same format. The proposal may actually result in longer disclosures, which would not be consistent with "clear and conspicuous."
- The compliance burden of reviewing, redesigning, and reissuing disclosures will outweigh the benefits for consumers.
- If the proposal moves forward, the Board should also revise the model forms, notices, and clauses and then resubmit the proposal for additional public comment. The Board should also allow an implementation period of at least 18 months before compliance is required.
- CUNA agrees that the Board should clarify that the term "amount" used in Regulation Z refers to a numerical amount. We also agree with the proposed changes with regard to rescission of certain mortgage loans, in which the consumer may send a rescission notice to anyone considered a creditor or assignee under state law if no such contact information is provided in the notice.
- The Board requested comment on debt cancellation and debt suspension coverage, and we offer the following comments:
    - CUNA does not believe further guidance is needed with regard to the current rules on the exclusion of fees for credit protection programs from the definition of "finance charge."
    - Fees for voluntary debt protection products should not be included as a "finance charge."
    - It is important for creditors to notify consumers of a conversion from a credit insurance product to a debt protection product.

Uniform Standards for Providing "Clear and Conspicuous" Disclosures

Credit unions support the Board's goal that disclosures should be clear, readily understandable, and designed to call attention to their significance and they strive to meet this goal as part of their regular business practices. However, credit unions do not believe that the proposed uniform standards will help achieve this goal and it will likely present substantial compliance challenges.

We understand that the proposal is modeled after the "clear and conspicuous" standard outlined in the privacy rules. We also realize that the purpose of the privacy notices is to inform consumers of the institution's privacy and information sharing practices and to provide consumers with an opportunity to opt out of sharing in certain circumstances.

However, the Board and the other federal financial institution regulators are currently considering possible changes to the content and format of the financial institutions' privacy notices to determine whether shorter, simpler notices may be more useful to consumers. This has been in response to the perception that many of these notices are difficult for consumers to understand and have not proven to be useful.

With changes to the content and format of the privacy notices under consideration, we do not believe it would be advisable to change the existing "clear and conspicuous" disclosure requirements in Regulations Z, B, E, M, and DD to conform to a standard that has not proven to be useful for consumers and that may change in the future. To change these requirements and then change the privacy notice standards upon which these changes are based will only cause confusion among credit unions and their members. This will defeat the goal of providing clearer standards for consumers. If the Board decides to pursue changes to the disclosure requirements in Regulations Z, B, E, M, and DD, there is always the option of considering such changes after the regulators have concluded their review of the privacy notices.

We also note that the proposal addresses transaction and credit-related disclosures, which by their nature are technical and contain information about rates, terms, and conditions that are usually specific to a particular product. Due to the nature of these types of disclosures, it may be difficult to conform their formats to the format of the credit unions' privacy policies, which are provided to all members and do not include the many terms and conditions associated with transaction and credit products. This issue will need to be addressed regardless of whether the changes to the disclosure requirements are considered before or after the regulators review the privacy notices.

Specifically, the proposal suggests that disclosures are "designed to call attention to the nature and significance" of the disclosed information if they use plain language headings, wide margins, ample line spacing, and boldface or italics for

“key” words. Again, these guidelines may be more appropriate for the credit unions’ privacy policies than for transaction and credit-related disclosures. For example, current rules require financial institutions to include a substantial amount of information in their transaction and credit-related disclosures. It may be difficult for credit unions to determine the aspects of these disclosures that are "key" and, therefore, should be bold or italicized. Many may decide to simply highlight every provision to ensure compliance with the proposed standard. This would substantially lengthen these disclosures, which would conflict with the goal of achieving disclosures that are clearer and more conspicuous for consumers.

Credit unions are also concerned about the compliance costs that would result from the proposed changes to the disclosure standards. The Board states in the proposal that "these revisions would not increase the paperwork burden of creditors." However, we believe that credit unions may have to make substantial changes to many of their disclosures in order to comply with the proposed standard.

Even if a credit union is currently meeting an eight point or greater font size, which would appear to be the minimum size, substantial employee time will still need to be diverted for purposes of reviewing the disclosures for other features, such as ample line spacing and wide margins. Printing new disclosures, and paying increased postage rates for lengthier disclosures, will also be costly. Overall, credit unions believe that this proposal will impose a substantial monetary and compliance burden that will result from the need to review, redesign, and reissue all of their disclosures that are required under Regulations Z, B, E, M, and DD.

The proposal states that "in a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures." The proposal describes the term "other information" as contractual provisions, state disclosures, translations, and promotional materials. Apparently, the intent of the proposal is to require financial institutions to clearly highlight the federally-required disclosures. We are concerned, however, that this may result in highlighting federally-required disclosures to the detriment of state and local requirements and, perhaps more importantly, obscuring possible contractual agreements that may bind consumers to the egregious terms of predatory lenders and other unscrupulous operatives.

We are also concerned that the Board has not proposed revisions to the model forms, notices, and clauses that are currently contained in the appendices of these regulations to reflect the proposed changes. Because of the potential for inconsistent interpretation and the ambiguities in the language of the proposed "clear and conspicuous" standard, we suggest that if the Board moves forward with these proposed changes, it should first consider reissuing the proposal with conforming model forms and language. The addition of conforming model forms and language would greatly improve the ability of credit unions to comment and

provide the Board with additional information that should prove useful as it moves forward in developing a final rule.

If the Board issues a final rule, we strongly encourage that there be an implementation period of 18 months or longer before compliance becomes mandatory. This will provide credit unions with the necessary time to comply with these changes and would be particularly beneficial to those that routinely print a 12-month supply of the required disclosures.

ADDITIONAL PROPOSED CHANGES TO REGULATION Z

We agree that the Board should clarify that the term "amount" used in Regulation Z refers to a numerical amount. Using the term "amount" to refer to anything other than a numerical amount could cause confusion for consumers. We also agree with the proposed changes with regard to rescission of certain mortgage loans, in which the consumer may send a rescission notice to anyone considered a creditor or assignee under state law if no such contact information is provided in the notice.

The Board requested comments regarding debt cancellation and debt suspension products. With regard to the similarities and differences between these products and credit insurance, while debt cancellation products have many of the same characteristics as credit insurance, the two products have significant differences. Debt cancellation products offered by credit unions are two-party agreements between the member and the credit union. In exchange for a fee, a credit union agrees to cancel, defer, or suspend a debt should the member experience a predetermined event such as death, disability, or involuntary unemployment. Conversely, credit insurance is a three-party agreement that insures a member against a specified loss. The product purchased by the member involves the insurance company, the credit union, and the member.

Currently, debt protection programs are being applied to a variety of loan products. These include:

- revolving charge cards
- open-end credit
- installment loans and leases for automobiles
- first mortgages, and
- home equity lines of credit

Many credit unions do not currently offer a debt protection product, but we believe that a number of them will begin to offer such products. These may be offered initially for only certain types of credit, which will then be expanded. For example, one credit union will initially offer such a product for open-end credit card loans and for closed-end and open-end consumer loans at a later time. Debt protection products for GAP and mortgage loans may then be considered at a later date. These products may very well be sold as a package that would

cover multiple events. Although debt protection products may be available to members both at and after consummation of a loan, we anticipate that most members will likely make the decision to purchase a debt protection product at the time of consummation.

Currently, fees for these products may be excluded from the finance charge. The Board requested comment as to whether there is a need for guidance concerning the applicability of this exclusion with regard to certain types of protection coverage that is now available. We do not believe there is a need for such guidance.

Under TILA, a credit card issuer must notify a consumer before changing his or her credit insurance provider. The Board has requested comment as to whether this should be interpreted or amended to address conversions from credit insurance to debt cancellation or suspension agreements.

We believe it is important for a creditor to notify affected consumers of an upcoming conversion from a credit insurance product to a debt protection product. For example, one credit union currently offers credit insurance at no charge to the borrowers, up to a certain amount. However, the credit union is planning to discontinue offering credit insurance and plans to offer a debt protection product in the future on a fee basis. The members with existing closed-end, and certain open-end, loans will not be impacted by this switch. They will continue to have credit insurance as part of their existing loan agreement. Those members who contract for certain closed- and open-end loans after the credit insurance option expires will only have the option of enrolling in the debt protection program. The members that will be affected will be notified well in advance of the date that the credit insurance offering will expire, and these members will have the option of purchasing a debt protection product at the time of notification.

Finally, we would like to take this opportunity to stress that credit unions would oppose amending Regulation Z to require fees for voluntary debt protection products to be included in the finance charge. Regulation Z defines the term "finance charge" as the cost of consumer credit and includes any charge payable by the consumer and imposed by the creditor as a condition of the extension of credit. It is our belief that a fee for a voluntary debt protection product would not fall within this definition since it is not a condition of credit and should not, therefore, be included in the finance charge calculation if financial institutions meet the disclosure requirements of Regulation Z, Section 226.4(d).

Also, requiring fees for voluntary debt protection products to be included in the finance charge would pose substantial compliance burdens. Besides reprogramming efforts that would be required to recalculate the annual percentage rates and finance charge amounts, credit unions would have finance charge calculation problems for those members who wish to enroll in debt

protection programs after loan consummation. For example, if fees for debt protection products are included in the finance charge and a member adds a debt protection product to his or her loan after consummation, the credit union would conceivably have to draft an entirely new note with a new rate and finance charge. Furthermore, federal credit unions are also subject to an interest rate ceiling on loans, which is currently 18%. If the inclusion of the fee increases the loan rate beyond the legal limit, credit union members may be inadvertently barred from adding such options to their loan agreements.

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Thank you for the opportunity to comment on the proposed revisions Regulations Z, B, E, M, and DD. If you or other Board staff have questions about our comments, please give Associate General Counsel Mary Dunn or me a call at (202) 638-5777.

Sincerely

Jeffrey Bloch
Assistant General Counsel